DOCUMENT RESUME

ED 363 526 SO 023 190

AUTHOR Leming, Robert S.
TITLE Teaching about the Fourth Amendment's Protection against Unreasonable Searches and Seizures. ERIC Digest.
INSTITUTION ERIC Clearinghouse for Social Studies/Social Science Education, Bloomington, IN.
SPONS AGENCY Office of Educational Research and Improvement (ED), Washington, DC.
REPORT NO EDO-SO-93-4
PUB DATE May 93
CONTRACT RI88062009
NOTE 4p.
PUB TYPE Information Analyses - ERIC Clearinghouse Products (071)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Constitutional History; *Constitutional Law; *Law Related Education; Secondary Education; Social Studies; *Teaching Methods; United States History
IDENTIFIERS Bill of Rights; ERIC Digests; *Fourth Amendment; United States Constitution

ABSTRACT

This digest discusses issues related to teaching about the Fourth Amendment of the U.S. Constitution. It begins by quoting the amendment that protects citizens of the United States against unreasonable searches and seizures, and goes on to discuss how the understanding and interpretation of the amendment have been influenced by historical events, technological inventions, and changes in thinking. The first section, on understanding and interpreting searches and seizures, outlines the development of the Supreme Court's interpretation through cases decided from 1886 through Katz v. United States, decided in 1967. The telephone, microphone, and instantaneous photography are examples of technological advances that changed the interpretation of the law. The second section explores the meaning of "unreasonable" in the Fourth Amendment. The discussion explains that it was in two cases, Weeks v. United States, decided in 1914, and Mapp v. Ohio, 1961, that the Court argued that evidence gathered in an illegal manner, without probable cause or without a search warrant, should be excluded from court proceedings. Various methods are suggested for teaching the Fourth Amendment. They include: the case study method; a moot court in which students participate as petitioners, respondents, and justices; a simluated congressional hearing; and scripted trials. The paper lists the following steps for teaching the case study method: (1) review the facts in the case; (2) determine the main constitutional issue in the case; (3) examine alternative arguments on each side of the issue in the case; (4) consider the decision (both the majority opinion and any dissenting opinions), and the legal reasoning in the case; and (5) assess the implications and significance of the case in constitutional history. (DK)

ED 363 526

Teaching about the Fourth Amendment's Protection

by
Robert S. Leming

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

X This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

SO 023 190

ERIC®

Clearinghouse for Social Studies/Social Science Education
2805 East Tenth Street, Suite 120
Indiana University
Bloomington, Indiana 47406 (812) 855-3838

ERIC Digest EDO-SO-93-4 May 1993

Teaching about the Fourth Amendment's Protection Against Unreasonable Searches and Seizures

by Robert S. Leming

The Fourth Amendment states, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." With the passage of the U.S. Bill of Rights in 1791, (Amendments I-X of the U.S. Constitution), Americans acquired protection against unreasonable searches and seizures by the federal government. The understanding and interpretation of ideas expressed in the Fourth Amendment have been influenced by historical events, technological inventions, and changes in thinking about the meaning of the provisions in the amendment.

Understanding and Interpreting Searches and Seizures. What is a search? What is a seizure?

What constitutes a search was clearly outlined in one of the earliest Fourth Amendment cases. Decided in 1886, *Boyd v. United States* involved a federal customs statute that required businessmen (involved in importing goods) to choose between producing invoices and record books during a government inspection or having the imported goods confiscated by customs officials. Justice Joseph P. Bradley, delivering the opinion of the Court, struck down the customs statute and, in doing so, widened the scope of the Fourth Amendment. He argued, "It is not the breaking of a man's doors and the rummaging of his drawers that constitutes the essence of the offense; but it is the invasion of his indefeasible right of personal security, personal liberty and private property, where that right has never been forfeited by his conviction of some public offense."

Justice Bradley's interpretation of the Fourth Amendment was reshaped by three technological developments that occurred during the later part of the 19th century. The telephone, the microphone, and instantaneous photography all created new ways to conduct searches and seizures. In light of these new inventions, the questions for the Court became whether or not the use of these devices constituted a search and, if they did, were the searches reasonable.

In the 1928 landmark case of *Olmstead v. United States*, the Court was given the opportunity to decide the constitutionality of wiretapping by the FBI. In a split decision, the Court ruled that a wiretap was not a search and seizure within the meaning of the Fourth Amendment, therefore, the FBI's actions were constitutional.

The *Olmstead* decision helped define the meaning and scope of the Fourth Amendment for the next forty years. However, in 1967 the Court decided *Katz v. United States*, in which it reversed the *Olmstead* decision. Katz had been convicted of illegal gambling based on evidence gathered using a wiretap placed in a public telephone booth. Conversations between Katz and his gambling associates were overheard and recorded by the FBI. Justice Stewart, writing for the majority, stated, "The Government's activities in electronically listening to and recording the petitioner's words violated the privacy upon which he justifiably relied while using the telephone booth and thus constituted a 'search and seizure' within the meaning of the Fourth Amendment." In *Katz*, the Court defined a "search" as any governmental intrusion into something in which a person has a reasonable expectation of privacy and "seizure" as taking into possession, custody, or control.

The Meaning of "Unreasonable" in the Fourth Amendment. The question of what is "unreasonable" was first dealt with at the federal level in the 1914 case of *Weeks v. United States* and nearly fifty years later at the state level in the 1961 case of *Mapp v. Ohio*. In *Weeks*, the Court argued that evidence gathered in an illegal manner, without probable cause or without a search warrant, should be excluded from court proceedings. In part, the exclusionary rule was adopted to prevent abuses by the police and other government officials. The logic followed that if police understand that evidence seized in a manner that violates any of the provisions of the Fourth Amendment will be excluded from court proceedings, they will less likely conduct searches without warrants or without probable cause. The *Weeks* decision only affected federal courts, and two-thirds of the state courts rejected the exclusionary rule, claiming the rule placed unnecessary burdens on the police and the rule favored the guilty.

In the 1961 case of *Mapp v. Ohio*, the U.S. Supreme Court expanded the rights of the accused by applying the exclusionary rule to all criminal trials, both federal and state. Ms. Mapp had been sentenced to a year in jail for possessing pornographic materials seized in a search of her apartment. The police entered her apartment without a valid warrant, searching for a fugitive from justice and illegal gambling slips. The state attorneys argued that no matter how incorrectly the police behaved, their actions did not change the facts in the case. Ms. Mapp was guilty of possessing pornographic materials, therefore, her conviction should stand. The state also argued that the U.S. Supreme Court should allow local government to handle police excesses in their own way.

The U.S. Supreme Court disagreed with the state of Ohio and would not tolerate such an abuse of power exhibited by the Cleveland police. The Court's decision ensured that all citizens were afforded Fourth Amendment protection against "unreason-

Robert S. Leming is Director of the Indiana Program for Law-Related Education of the Social Studies Development Center, Indiana University.

able searches and seizures" by all levels of governmental officials.

During the past thirty years, many exceptions to the provisions outlined in the Fourth Amendment have been approved by the U.S. Supreme Court. In many situations, warrantless searches have been upheld by the Court. In addition, a number of exceptions to the exclusionary rule have also been approved. The constant changes in our thinking about and interpretation of the meaning of the Fourth Amendment illustrates the continuous evolving struggle of a citizenry trying to balance the democratic principles of securing and protecting individual rights with the promoting of public order and the common welfare.

Methods for Teaching the Fourth Amendment. An effective method of teaching Fourth Amendment ideas and issues is to use case studies, such as the *Katz* and *Mapp* cases. The case study method is effective because students learn to analyze a legal case by participating in class discussions, taking sides, stating points of view, and formulating and evaluating decisions. The case study method includes the following steps:

- Review the facts in the case.
- Determine the main constitutional issue in the case.
- Examine alternative arguments on each side of the issue in the case.
- Consider the decision (both the majority opinion and dissenting opinions, if any) and legal reasoning in the case.
- Assess the implications and the significance of the case in constitutional history.

Information for creating Fourth Amendment case study lessons can be derived from the official record of U.S. Supreme Court decisions, *United States Reports*. Standard reference books are useful sources of information on important Supreme Court cases. For example, a reliable source is *The Oxford Companion to the Supreme Court of the United States*.

In addition to the case study method, a moot court is an effective strategy that involves students participating as petitioners, respondents, and justices in a U.S. Supreme Court simulation. Students acting as attorneys prepare written arguments and present three-to-five-minute statements to panels of students participating as justices. The justices are responsible for rendering a decision and writing brief majority or minority opinions. In addition to helping students understand the facts, arguments, constitutional issues, and the decision in a case, a moot court helps students understand the process involved in obtaining justice.

Another effective teaching method is a simulated congressional hearing. The best example of this strategy in practice is "We the People. . . the Citizen and the Constitution." This national program is coordinated by the Center for Civic Education and is funded through the U.S. Department of Education. Students involved in the congressional hearings compete at the congressional district, state, and national levels. Entire classes, broken into six groups, prepare for hearings by studying the historical roots and modern day applications of democratic principles that are included in the Constitution and Bill of Rights. The hearings require students to formulate written statements presented orally to a panel of judges and to answer probing questions that require students to formulate verbal responses based on their understanding of the issues and their ability to apply democratic principles to modern-day examples. A simulated congressional hearing could be designed to test students' understanding of Fourth Amendment issues.

A final teaching method that involves students in learning constitutional principles is the use of Constitution-based scripted trials. A scripted trial involves students in the trial process through their participation as a judge, a bailiff, attorneys, witnesses, and jurors. Because the trial is scripted, key issues and information about the central issues of the case are introduced to the participants through the testimony of witnesses and the questions posed by the attorneys. After hearing and evaluating the evidence presented during the trial, students are asked to interpret the law and make decisions that affect the innocence or guilt of the defendant. Students are also encouraged to apply what they have learned through their participation in the scripted trial to new situations. An example of a Constitution-based scripted trial is *Indiana v. Jamie L. Curtis*, 1992. This scripted trial, published by the Social Studies Development Center and the Indiana State Bar Association, asks students to consider the reasonableness of a search of a student's book-bag.

The participants learn to apply a two-pronged test devised by the U.S. Supreme Court in the 1985 *New Jersey v. T.L.O.* case. The test suggests that both the inception and the scope of the search must be based on a reasonable suspicion.

References and ERIC Resources

The following list of resources includes references used to prepare this Digest. The items followed by an ED number are available in microfiche and/or paper copies from the ERIC Document Reproduction Service (EDRS). For information about prices, contact EDRS, 7420 Fullerton Road, Suite 110, Springfield, Virginia 22153-2852; telephone numbers are (703) 440-1400 and (800) 443-3742. Entries followed by an EJ number, annotated monthly in CURRENT INDEX TO JOURNALS IN EDUCATION (CIJE), are not available through EDRS. However, they can be located in the journal sections of most libraries by using the bibliographic information provided, requested through Interlibrary Loan, or ordered from UMI or ISI reprint services.

Aldridge, Kathy, and Jeanne Wray. "Students' Constitutional Rights." UPDATE ON LAW-RELATED EDUCATION 12 (Winter 1988): 30-33. EJ 368 161.

Anderson, Charlotte, and Charles Williams. "Supreme Court Docket: Drug Testing and the Fourth Amendment." SOCIAL EDUCATION 53 (April-May 1989): 229-232. EJ 391 389.

Armonda, Stacy, Marshall Croddy, and Diana Hess, et. al. THE DRUG QUESTION. Chicago, IL: Constitutional Rights Foundation, 1991.

Chandler, Ralph C., et. al. THE CONSTITUTIONAL LAW DICTIONARY. Santa Barbara, CA: ABC-Clio, Inc., 1985, 155-194.

Hall, Kermit, et. al. THE OXFORD COMPANION TO THE SUPREME COURT OF THE UNITED STATES. New York: Oxford University Press, 1992.

Leming, Robert S. INDIANA V. JAMIE L. CURTIS. Bloomington, IN: Social Studies Development Center, Indiana University, 1992. ED number will be assigned.

Patrick, John J. CONSTITUTIONALISM IN EDUCATION FOR DEMOCRACY: THE CONTINUING RELEVANCE OF ARGUMENTS ON CONSTITUTIONAL GOVERNMENT OF THE AMERICAN FOUNDING ERA. Paper presented at the Mershon Center Conference on Education for Democracy, The Ohio State University, Columbus, OH, March 4-7, 1993. ED number will be assigned.

Quigley, Charles N., et. al. WE THE PEOPLE. . . Calabasas, CA: Center for Civic Education, 1987. ED 292 692.

Rossow, Lawrence F. SEARCH AND SEIZURE IN THE PUBLIC SCHOOLS. Topeka, KS: National Organization on Legal Problems of Education, 1987. ED 281 305.

Shattuck, John H. F. "Freedom from Unreasonable Search." In RIGHT OF PRIVACY. Skokie, IL: National Textbook Company in conjunction with the American Civil Liberties Union, 1977.

Westin, A. PRIVACY AND FREEDOM. New York: Atheneum, 1967, 338-39.

This publication was prepared with funding from the Office of Educational Research and Improvement, U.S. Department of Education, under contract no. RI88062009. The opinions expressed do not necessarily reflect the positions or policies of OERI or ED.